IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOUI

ALEXANDER AUSTIN,	)	
Plaintiff,	)	
v.	)	Civil Action No.
JOSEPH PEREZ,	)	
and	)	
BRANDON CARRIER,	)	
and	)	
J&A GROUP LLC,	)	
and	)	
LINA, LLC,	)	
Defendants.	)	

COMPLAINT

COMES NOW PLAINTIFF, Alexander Austin ("Austin"), for its Complaint against Joseph Perez ("Perez"), Brandon Carrier ("Carrier"), J&A Group LLC ("J&A"), and Lina, LLC ("Lina") and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff Austin is a Missouri resident.

2. Upon information and belief, Defendant Perez has been an owner of Artego Pizza, a restaurant located in this judicial district.

3. Upon information and belief, Defendant Carrier has been an owner of Artego

Pizza, a restaurant located in this judicial district.

4. Defendant J&A is a Missouri limited liability company.

5. Defendant Lina is a Missouri limited liability company.

6. This Complaint includes an action for copyright infringement under 17 U.S.C. § 501 *et seq*., an action for removal or alteration of copyright management information under the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202, and a violation of the Visual Artists Rights Act under 17 U.S.C. § 106(a)).

7. This court has jurisdiction over the subject matter of the complaint pursuant to 28 U.S.C § 1338(a) because this is a civil action arising under an Act of Congress relating to copyrights.

8. This court has jurisdiction over the remaining claims under 28 U.S.C § 1367(a) because they form part of the same case or controversy as the aforementioned copyright claims.

9. Upon information and belief, this court has personal jurisdiction over Perez and Carrier because of their substantial and continuous business contacts with the state of Missouri through the operating of Artego and because the acts giving rise to this Complaint have occurred as a result of Perez's and Carrier's contact with the state of Missouri.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 & 1400 because all Defendants conduct business within the judicial district and acts giving rise to this Complaint are believed to have occurred within this judicial district.

FACTUAL BACKGROUND

Alexander Austin

11. Austin is a professional artist who is known for his numerous murals and portraits he has painted over his illustrious career spanning several decades.

12. Austin has a unique portrait painting style which combines "creation and destruction" styles where he first "creates" a realistic portrait then "destroys" the realism of the portrait with his unique style including color splatters to the surrounding background.

13. Austin has also painted many prominent murals around Kansas City, Missouri, including jazz figures at 18th and Vine, historic portraits of Kansas City along Troost Avenue, the Power & Light District's 18,000-square-foot south wall (the largest mural in the city's history), as well as murals for the Kansas City Royals, Google, and the Kansas City Zoo.

14. Austin has been featured frequently in both national and local media.

15. Austin was honored as the "Home Town Heroes Artist of the Year" by Major League Baseball during the 2012 MLB All-Star Game in Kansas City.

16. Austin's work is owned by celebrities such as Will Smith, Magic Johnson and Danny Glover.

17. From 2009 to 2016, Austin painted the following twenty-five original works which are the subject of the present lawsuit ("Austin Paintings"):

Title	Application No.
Hendrix – Orange 2016	1-4984736743
Tupac – Window 2016	1-4984737088
Sinatra – Color 2016	1-4984737123
Morrison – Need You 2014	1-4986319218
Kravitz – Golden Age 2013	1-4986319253
Marley – Chaos 2013	1-4986319348
Prince – Focus on the Rose 2014	1-4986319413
Hendrix – Truth and Reality 2013	1-4986319558
Sinatra – Into the Blue 2016	1-4986319613
Prince – Self Critique 2013	1-4986319708
Beatles – Illusions 2013	1-4986319743
Slash – Purple Strings 2015	1-4986319778
MJ – Pop's Greatest 2015	1-4986319813
Obama – Time is Now 2009	1-4986319958
Lennon – Black and White 2015	1-4986319993
Janelle – Elements 2016	1-4986320028

Madonna – Solid Gold 2013	1-4986320063
Joe – Perez 2010	1-4986320098
Beatles – Squared off bMW 2014	1-4986320133
Cobane – Through His Eyes 2013	1-4986320168
MJ – My Planet 2014	1-4986712223
Jimmy H – My Favorite 2016	1-4986712258
Willie – My Color 2016	1-4986712303
JC 2015	1-5000675632
Dove Cry 2016	1-5000675807

18. Austin's standard practice is to sign all of his paintings with his unique "ALEXANDER AUSTIN" signature.

19. On April 28, 2017, Austin applied for a copyright registration for each of the aforementioned twenty-five original works of art. All twenty-five copyright applications are still pending.

Artègo Pizza and its Owners

20. Artègo Pizza ("Artego") is a restaurant located at 900 W 39th St. in Kansas City, Missouri.

21. Upon information and belief, Artego was opened in 2014 by Defendants Perez and Carrier, each owning 50%.

22. Upon information and belief, Artego has at one time been owned by Defendant J&A during the relevant time period.

23. Upon information and belief, Artego has at one time been owned by Defendant Lina during the relevant time period.

24. Upon information and belief, Artego's name means "art ego" and the name was adopted as a reference to Austin.

25. The Austin Paintings are displayed on nearly every wall and cover the majority of

visible wall space in Artego.

26. Many of the Austin Paintings are also displayed on Artego's social media and website.

27. The Austin Paintings are an integral part of the overall impact and appearance of Artego's social media and website.

28. Videos of Austin creating some of the Austin Paintings are displayed on Artego's social media and website.

29. A passage about Austin and his works have been featured on Artego's menus.

30. The Austin Paintings are an integral part of the atmosphere of Artego as can be seen in the promotional images of Artego below.

Promotional photograph of the interior of Artego

Promotional photograph of the interior of Artego

31. The Austin Paintings are critical to the sale of food and beverages at Artego and Artego's profits can be directly attributed, in large part, to this atmosphere and environment created by the Austin Paintings.

Artist Agreement and Additional Paintings

32. On December 23, 2015, Austin and Defendant Perez signed an "Artist Agreement" allowing eight of Austin's original paintings to displayed and offered for sale inside Artego. These eight paintings make up a portion of the Austin Paintings.

33. The 2015 Agreement noted that while the paintings were an "intricate part of the décor of Artego Pizza, Alexander Austin will retain sole ownership of any unsold artworks."

34. The minimum sale prices for the eight paintings listed in the 2015 Agreement ranged from $2,500 to $5,000.

35. The 2015 Agreement required Perez and Artego to display art plaques with a description of the retail price and artist contact painting for each individual painting.

36. Perez has purchased additional Austin Paintings. These purchased paintings make up another portion of the twenty-five Austin Paintings.

37. Austin provided additional paintings which were not covered by the 2015 Agreement to remain in Artego on a temporary basis.

Defendants' Illegal Activity

38. Sometime in late 2016 or early 2017, Austin learned that Perez and Artego breached the 2015 Agreement by refusing to display the Austin Paintings with attributions to Austin and by removing the existing art plaques which Austin had placed himself.

39. At this point in time, Austin was been banned from entering Artego and currently is banned to this day.

40. On March 7, 2017, through counsel, Austin sent a letter to Perez and Artego notifying them that they had breached the 2015 Agreement and demanded the return of the unsold Austin Paintings along with an accounting of those which had been sold ("March 7^{th} Letter").

41. The March 7^{th} Letter also made it clear that Austin was revoking any permission that Perez and Artego had to display any of the Austin Paintings both in the store or online. The letter notes that continued display would constitute willful copyright infringement.

42. On March 27, 2017, Austin sent a second letter to Perez reaffirming the March 7^{th} Letter and again demanded the return of the Austin Paintings ("March 27^{th} Letter").

43. On April 13, 2017, Perez met with Austin's counsel in response to the letters.

44. No resolutions were reached at the April 13^{th} meeting and Austin's attorneys again reaffirmed the demands made in the March 7^{th} and 27^{th} Letters including the removal and return of the Austin Paintings.

45. Near midnight that same April 13, 2017 day, after failing to reach resolution with

Austin's attorneys, Perez went to Austin's home.

46. Upon information and belief, Perez went to Austin's home to force or coerce Austin to sign over all rights to the Austin Paintings to Perez and Artego.

47. Austin was intimidated when Perez, a former professional football player for the Kansas City Chiefs[1], who has a physically imposing stature, pounded on Austin's door and came into Austin's house.

48. Perez attempted to force Austin into signing over the rights to the Austin Paintings. Austin refused to sign any agreement.

49. Despite Austin's repeated attempts, Perez and Artego have refused to return Austin's paintings or provide an accounting of sales.

50. Upon information and belief, Perez and Artego have continued to display the Austin Paintings without permission both inside Artego and online.

51. Upon information and belief, Austin's identifying information has been removed from most, if not all, of the Austin Paintings both in Artego and online.

52. Many of the Austin Paintings located on Artego's social media and website have been cropped to remove Austin's "ALEXANDER AUSTIN" signature.

53. Instead, Artego's website, which contain numerous Austin Paintings, has the following copyright notice: (c) Copyright Artego Pizza, Kansas City, Missouri.

54. Upon information and belief, Perez and Artego have removed this identifying information for the Austin Paintings, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement

[1] Although Perez is not listed on NFL.com or anywhere else as having played any games or accumulating any stats for the Chiefs, but according to Arrowhead Pride, he was at one time under contract with the organization as a practice squad and NFL Europe player. *See* http://www.arrowheadpride.com/2009/6/25/924599/the-greatest-kansas-city-chiefs-by

55. Perez and Artego have completely deprived Austin of his ability to possess, sell, or display the Austin Paintings.

COUNT 1 - COPYRIGHT INFRINGEMENT
(17 U.S.C. § 501)

56. Austin incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

57. Count 1 is pled against each and every Defendant.

58. Austin has applied for separate copyright registrations for each of his Austin Paintings.

59. Defendants infringe Austin's copyright through the unlawful display of the Austin Paintings in Artego.

60. Defendants also infringe Austin's copyright through the unlawful display, reproduction, distribution, and creation of a derivative works of the Austin Paintings via postings on social media and other places online.

61. Upon information and belief, the infringing acts of Defendants are willful and intentional.

COUNT 2 – REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT IFORMATION
(17 U.S.C. § 1202)

62. Austin incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

63. Count 2 is pled against each and every Defendant.

64. Defendants have falsely identified Artego Pizza has the owner of some of the Austin Paintings on Artego's website.

65. Upon information and belief, Defendants did so with the intent to induce enable,

facilitate, or conceal infringement.

66. Therefore, in violation of 17 U.S.C. § 1202(a), Defendants, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, has provided copyright management information for 9622 that is false.

67. Defendants have removed or altered copyright management information identifying Austin as the author of the Austin Paintings from their websites through cropping of his photos and by other means.

68. Upon information and belief, Defendants did so with the intent to induce enable, facilitate, or conceal infringement.

69. In violation of 17 U.S.C. § 1202(b), Defendants, without the authority of the copyright owner or the law, intentionally removed or altered copyright management information for the Austin paintings, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of a right under Title 17 of the United States Code.

COUNT 3 – VIOLATION OF VISUAL ARTISTS RIGHTS ACT
(17 U.S.C. § 106(a))

70. Austin incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

71. Count 3 is pled against each and every Defendant.

72. Defendants have violated Austin's right to integrity by displaying the Austin Paintings both in Artego and online without permission and by modifying, mutilating, or distorting his work, devaluing them

73. Defendants have violated Austin's right to attribution by refusing to attribute the Austin Paintings being displayed in Artego and online to Austin. Defendants explicitly removed

plaques attributing the Austin Paintings to Austin from Artego.

COUNT 4 – BREACH OF CONTRACT
(Missouri Common Law)

74. Austin incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

75. Count 4 is pled against each and every Defendant.

76. The 2015 Agreement is a valid contract.

77. Defendant Perez signed the contract.

78. Upon information and belief, the other Defendants also had knowledge of the contract.

79. Defendants material breached the 2015 Agreement by refusing to display the price and artist identification information for each painting as required in the contract.

80. Defendants breach directly caused Austin to be damaged through a loss of good will.

COUNT 5 – UNJUST ENRICHMENT
(Missouri Common Law)

81. Austin incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

82. Count 5 is pled against each and every Defendant.

83. Defendants have unjustly obtained from Austin the benefit of the unauthorized displaying of his works in Artego and online. The unauthorized display adds to the environment of his restaurant and has increased the amount of customers and sales.

84. Defendants have not paid anything or given any consideration for this benefit.

85. Austin has not received just compensation for Defendants benefit.

COUNT 6 – CONVERSION
(Missouri Common Law)

86. Austin incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

87. Count 6 is pled against each and every Defendants.

88. Austin has retained full ownership rights in majority of the Austin Paintings.

89. Defendants have taken possession of the Austin Paintings with the intent to exercise control over them by keeping them in Artego and locking Austin out.

90. Defendants have refused to give up possession of the Austin paintings despite multiple demands from the owner Austin.

91. Defendants have deprived Austin of the right to possession of the Austin Paintings and have prevented Austin from being able to possess, sell, or display them.

92. Defendants behavior in attempting to intimidate Austin into signing over his rights to the Austin Paintings was willful, wanton, and outrageous and therefore warrants punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Austin demands a judgment against Defendants and prays that this Court will:

a. Under 17 U.S.C. § 502, grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain infringement of Austin's copyrights.

b. Under 17 U.S.C. § 503, order the impounding and ultimately destruction, on such terms as it may deem reasonable, of any records or material involved in Defendants' copyright infringement, including any unauthorized reproductions of the work.

c. Under 17 U.S.C. § 504, award Austin's actual damages and any additional profits of Defendants;

d. Under 17 U.S.C. § 505, award costs to Austin;

e. As the prevailing party in a Copyright lawsuit, award to Austin reasonable attorney's fees.

f. Under 17 U.S.C. § 1203(b)(1), grant a temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a further violation;

g. Under 17 U.S.C. § 1203(b)(2), order the impounding, on such terms as it deems reasonable, any device or product that is in the custody or control of Defendants that the court has reasonable cause to believe was involved in a violation;

h. Under 17 U.S.C. § 1203(b)(3), either the actual damages and any additional profits of Defendants' in accordance with 17 U.S.C. § 1203(c)(2) or, if Austin so elects before judgment is entered, statutory damages in accordance with 17 U.S.C. § 1203(c)(3).

i. Under 17 U.S.C. § 1203(b)(4), award costs to Austin;

j. Under 17 U.S.C. § 1203(b)(5), award reasonable attorney's fees to Austin;

k. Under 17 U.S.C. § 1203(b)(6), order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of Defendants or has been impounded under paragraph 17 U.S.C. § 1203(b) (2).

l. In accordance with 17 U.S.C. § 106(a), grant an injunction requiring Defendants to display proper artist identifying information with any of Austin's works of art they obtain permission to display;

m. An order declaring that the 2015 Agreement is a valid agreement and that Defendants materially breached the 2015 Agreement.

n. Award to Austin damages in the amount equal to the value of the goodwill lost by Austin as a result of the breach.

o. Award to Austin a portion of Artego's profits which were gained unjustly through Defendants' display of Austin's works in Artego;

p. Award to Austin the value of the paintings for which Defendants have converted;

q. Award to Austin as punitive damages treble the value of the paintings because of the intentional wanton, willful, and outrageous acts committed by Defendants;

r. Award to Austin all available pre-judgment and post-judgment interest on all amounts of any judgment; and

s. Grant to Austin such further relief as may be equitable and proper.

DESIGNATION OF PACE OF TRIAL

Austin herby designates Kansas City, Missouri as the place of trial of the above-styled matter.

REQUEST FOR JURY TRIAL

Austin herby requests trial by jury of the above-styled matter.

Respectfully submitted,

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